UNITED NATIONS

LOS

UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.82/Rev.1
29 May 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Eighth session
Kingston, Jamaica
5-30 March 1990

STATEMENT BY THE CHAIRMAN OF THE PREPARATORY COMMISSION

1. During the session, the plenary dealt with the following matters:

(a) Organization of work;

(b) Preparation of draft agreements, rules, regulations and procedures for the Authority;

(c) Implementation of resolution II;

(d) Adoption of the recommendations of Special Commission 2 on the implementation of the Preparatory Commission Training Programme;

(e) Commemoration of the accession to independence of Namibia.

I. ORGANIZATION OF WORK

2. On 5 March 1990, upon the recommendation of the General Committee, the plenary adopted a programme of work for the current session of the Commission which enabled all the special commissions and the plenary on the Authority to meet. The programme was adopted on the understanding that changes would be made as circumstances required.

II. PREPARATION OF DRAFT AGREEMENTS, RULES, REGULATIONS AND PROCEDURES FOR THE AUTHORITY

3. The plenary held 10 meetings on the Authority. During part of the time allocated to the plenary the Chairman held consultations on the following issues: the Finance Committee, the "hard-core issues" of subsidiary organs and observers

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and certain articles left pending during the consideration by the plenary of the draft Headquarters Agreement.

4. The plenary commenced its work with the second reading of the revised draft Agreement between the International Sea-Bed Authority and the Government of Jamaica regarding the Headquarters of the International Sea-Bed Authority, which had been circulated by the Secretariat on 16 February 1990 in document LOS/PCN/WP.47/Rev.1. Subsequently, the plenary proceeded to the consideration of the draft Protocol on the Privileges and Immunities of the International Sea-Bed Authority, contained in document LOS/PCN/WP.49.

5. The plenary devoted six meetings to the second reading of the draft Headquarters Agreement and as a result provisionally approved without amendments the preamble and articles 1, subparagraphs (a); (b); (c); (d); (e); (g); (h); (i); (j); (k); (m); (n); (o); (p); (q); (r); (s); (t); (u), 2, 4, paragraphs 1-6, 5, paragraphs 1-4, 6-8, 9, paragraphs 1-4, 10, 12-17, 19, paragraph 1, 20, 21, 22, paragraph 1, 23-25, 27, paragraphs 1, 2, 3, 5, 28, 29, 31-33, 35, paragraphs 1 and 2, 36, 37, subparagraphs (d); (e); (f); (g); (h), 38, 39, 43, 44, 46, 47, 49, 51, 52, paragraph 1, 53, 54 and 56-59.

6. With reference to article 1 (Use of terms), it was decided that subparagraph (n) should be placed before subparagraph (i).

7. The plenary provisionally adopted as orally amended draft articles 1, subparagraphs (f) and (v), 2, paragraphs 2 and 3, 5, paragraph 5, 11, 19, paragraph 2, 22, paragraph 2, 34 (with the exception of subparagraph (b)), 37, subparagraph (d), 42, 45 and 50.

8. At the beginning of the second reading of the draft Headquarters Agreement, the plenary reached an understanding that articles on which it would be difficult to obtain an agreement in the plenary would be left for the consultations of the Chairman with interested delegations. The articles that were subsequently referred to such consultations are the following: articles 1, paragraph 1, 3, 4, paragraph 7, 9, paragraph 5, 18, 26, 27, paragraphs 4 and 6, 30, 34, subparagraph (b), 35, paragraph 3, 37, subparagraphs (b) and (c), 40, 41, 48, 52, paragraph 2, and 55.

9. The Chairman reported the results of these consultations to the plenary at a meeting held on 29 March 1990. He pointed out that participants in the consultations agreed that article 1, paragraph 1, and article 26, paragraph 5, should remain as presently drafted and articles 3, 18, 27, paragraphs 4 and 6, 37, subparagraph (c), 40 and 52, paragraph 2, should be redrafted in the light of the consultations. It was also recommended that articles 30, 35, paragraph 3, and 41 should be deleted.

10. With reference to article 41, it was pointed out that its deletion would require reconsideration of certain articles on the privileges and immunities in order to determine the provisions where reference to spouses and dependent members of the families should be included. This issue will first be addressed at the level of consultations at the next session and then the results will be brought to

the plenary for approval. To facilitate these consultations, the Secretariat was asked to prepare a list of articles of the Headquarters Agreement that might need modification, indicating in the footnotes precedents which might serve as sources of reference.

11. Due to lack of time it was not possible to complete at the consultations the consideration of articles 4, paragraph 7, 34, subparagraph (b), 37, subparagraph (b), 48 and 55 and they were left pending further discussions at the next session.

12. During the consideration of the draft Headquarters Agreement, several delegations raised the question of the relationship between the Authority and the Enterprise. They held the view that there was some ambiguity in the text of the draft Agreement in that it did not provide a clear answer as to which of its provisions applied to the Enterprise. It was noted that although under the Convention on the Law of the Sea the Enterprise was an organ of the Authority the Enterprise enjoyed a specific status which the draft Agreement itself acknowledged since it contained a separate definition for the Enterprise and a set of articles dealing solely with the Enterprise.

13. In accordance with the decision taken at the summer meeting in New York, the plenary conducted the first reading of the draft Protocol on the Privileges and Immunities of the International Sea-Bed Authority. The text of this instrument, which was prepared by the Secretariat, had been circulated at the end of the previous session in document LOS/PCN/WP.49. In order to facilitate the consideration of the draft Protocol the Secretariat circulated a conference room paper (LOS/PCN/1990/CRP.36) indicating the sources used in drafting various provisions of the Protocol.

14. At the first reading, the plenary approved without amendments the preamble and articles 1, subparagraphs (a); (b); (f); (i); (j); (m), 4-8, 12, 25, 26 and 28. Articles 1, subparagraphs (c); (d); (e); (h); (k); (l), 2, 9, 11, 13-15, 18 (with the exception of paragraph 1 (a) and (b)), 19 (with the exception of paragraph 3 (b)), 20 (with the exception of paragraph 1 (a) and (c)), 24, 27 and 30 were provisionally approved as orally amended.

15. It was decided that a definition of archives similar to the one inserted in the draft Headquarters Agreement should be included in article 1.

16. It is understood that the text of articles 3 (Legal personality of the Authority) and 10 (Legal status of the Enterprise) should be redrafted, taking into account the outcome of the consultations on the analogous provisions in the draft Headquarters Agreement.

17. It was decided that article 19 on the privileges and immunities of the Secretary-General and other officials of the Authority would be divided into three articles similar to what had been done in the case of the draft Headquarters Agreement.

18. The plenary was unable to reach an agreement on articles 1, subparagraph (g), 16, 17, 18, paragraph 1 (a) and (b), 19, paragraph 3 (b), 20, paragraph 1 (a) and (c), 21-23 and 29. The Chairman intends to undertake consultations with respect to these articles.

19. In connection with articles 1, subparagraph (g), 2, 3, 10, 16 and 17, it was pointed out by several delegations that a formula should be found which would ensure that under the text of the Protocol, the Enterprise, because of its specific character, should not enjoy all the privileges and immunities provided for the Authority.

Informal consultations

1. Finance Committee

20. As was indicated in my report on the work of the plenary at the session in New York in August 1989, at the end of that session I began consultations with interested delegations on the matters related to the Finance Committee (LOS/PCN/L.77, para. 26). The consultations undertaken in New York were continued at the eighth session at Kingston.

21. These consultations are intended to provide an opportunity to address in a flexible and informal atmosphere the problems identified by the plenary during the discussion of the working paper on the Finance Committee prepared by the Secretariat (LOS/PCN/WP.45). It was understood that the results of the consultations would be reported to the plenary.

22. The participants in the consultations expressed the view that they were useful and should be continued at the next session in order to provide the Secretariat with sufficient guidance for the preparation of a revised paper on the Finance Committee.

23. Although the consultations so far have been inconclusive, I would like to inform the plenary on the matters discussed and I would also like to share my personal perceptions of the directions in which the consultations have developed and of the means whereby a compromise solution might be sought. These are very preliminary considerations and they neither represent the conclusions reached at the consultations, nor prejudice the position of any State participating in the consultations.

24. It was agreed that the following main issues should be addressed at the consultations: composition of the Finance Committee; status of the Finance Committee with regard to such organs as the Assembly and the Council; functions and decision-making.

25. With regard to the composition, the following three main elements were identified:

(a) Representation of special interests;

(b) Equal/equitable geographical representation;

(c) Representation of highest contributors.

26. It is the view of the Chairman that on the question of composition a compromise solution may lie in acceptance of the fact that until the Authority is self-financed the criterion of major contributors would have to be taken into consideration in establishing the Finance Committee.

27. As far as the status of the Finance Committee with regard to the Assembly and the Council is concerned, it might be stated that the idea of having the Finance Committee as a subsidiary organ to both the Assembly and the Council is receiving growing support. It is understood however that this conclusion could only be reached on the assumption that the Finance Committee will be assigned functions providing for its direct reporting on particular functions either to the Assembly or to the Council.

28. The issue of the appointment of the members of the Finance Committee is closely linked to its status. If the Finance Committee is a subsidiary organ of the Assembly and the Council, the appointment of its members should logically be entrusted to the Council, bearing in mind that the Council itself is elected by the Assembly.

29. Primary attention at the session was focused on the functions of the Finance Committee, which were subjected to careful examination during two meetings.

30. To facilitate the discussions, the Secretariat circulated in document LOS/PCN/1990/CPR.38 a preliminary list of functions of the Committee. It combined the functions included in the working paper on the Finance Committee prepared by the Secretariat (LOS/PCN/WP.45), the functions contained in the working paper submitted by six States in document LOS/PCN/WP.48 as well as some additional functions that had been mentioned during the debate in the plenary. Having considered the list on a preliminary basis, the participants in the consultations agreed that it might be reduced by eliminating some of the functions and combining others. As a result the Secretariat has been provided with the necessary guidance to proceed with the preparation of a revised list of the functions for the next round of consultations.

31. It should be noted that during the consideration of the functions of the Finance Committee the idea emerged that with regard to certain functions the Committee should provide its advice only if requested by the Assembly or the Council, while some other functions would require the Committee to take the initiative in making recommendations without waiting for a specific request. In other words, in some cases the Committee should not intervene unless it is requested to by the principal organs, while in the others, the Assembly or the Council should not proceed with the matter unless they have received advice from the Finance Committee.

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32. Due to lack of time, the exchange of views on decision-making procedures was of a preliminary character. Three options were mentioned on this matter, viz., decisions taken by (a) consensus, (b) various majorities or (c) a combination of both consensus and various majorities. It was the task of the consultations to eliminate some of the options.

33. In the view of the Chairman the consultations indicated that the question of decision-making should be linked to functions. In this respect some delegations were of the view that while some functions might require decision-making by consensus others might require some other decision-making mechanism.

34. It was agreed that all decision-making options referred to in the consultations should be kept in mind for the time being. Discussions on the matter will continue at the next session and an attempt will be made to narrow the gap between the positions. At the same time, the consultations revealed that the decision-making process in the various organs of the Authority was linked and therefore should be addressed at some stage in their complexity, if efforts to resolve them separately for each organ should fail.

2. Subsidiary organs and observers

35. In accordance with the programme of work at the session, the Chairman conducted consultations on the so-called hard-core issues of subsidiary organs and observers.

36. On the issue of the subsidiary organs of the Assembly, it was agreed at the suggestion of the Chairman that the Preparatory Commission should not make any recommendations to the Authority with regard to the establishment of subsidiary organs of the Assembly. The only exception could be the Finance Committee if the Preparatory Commission decided to recommend it as a joint subsidiary organ of the Assembly and the Council. Therefore, it should be left to the Assembly to decide in the light of its needs and the particular circumstances what subsidiary organs it might wish to establish.

37. In this connection the Chairman noted that although the Preparatory Commission should make necessary recommendations to the Authority to ensure its proper functioning, there was a general concern with respect to the financial implications involved in recommending a heavy structure for the Authority at the initial stage of its operation. He also pointed out that it would be difficult for the Preparatory Commission to foresee the types of subsidiary organs that the Assembly might require to perform its functions at the different stages of its activities.

38. It must be observed that one delegation held the view that by taking this decision the Preparatory Commission was in effect abdicating its responsibilities. It was pointed out that it would not be realistic to believe that the Assembly, sitting in plenary sessions, would be able to deal effectively with its agenda.

39. As a result of the adoption of the Chairman's proposal, it was recommended that the wording of rule 86 on the establishment of subsidiary organs in the rules of procedure of the Assembly (LOS/PCN/WP.20/Rev.2) should be retained.

40. For the reasons outlined above, the Chairman suggested that, apart from the Finance Committee, no other subsidiary organs should also be recommended for the Council. This proposal having received general acceptance, it was decided that rule 82 on the subsidiary organs in the rules of procedure of the Council (LOS/PCN/WP.26/Rev.2) should be retained with the deletion of the word "other" which had been in square brackets.

41. In introducing the issue of observers the Chairman outlined two types of questions that should be addressed. This first concerned the entities which would be granted observer status. The second was related to the extent and nature of the participation of observers in the work of the Assembly and the Council.

42. With regard to the first question, the participants in the consultations agreed on the list of entities contained in paragraph 1 of rule 93 of the rules of procedure of the Assembly (LOS/PCN/WP.20/Rev.2). As a result paragraph 1 of rule 93 was approved.

43. As far as the nature and extent of observer participation in the work of the Assembly and the Council are concerned, it was clear that at the present stage it would be very difficult to narrow the gap between the various positions. Therefore, this matter was deferred to a later stage. There was however a perception among participants in the consultations that the issue of the status of observers should not be dealt with in a manner which could be construed as a disincentive for States to ratify or accede to the Convention. There was also broad agreement on the need to make efforts to promote the universal character of the Convention.

44. On the question of the programme of work of the plenary on the Authority, it was decided that at the next meeting the plenary would undertake a second reading of the draft Protocol on the Privileges and Immunities of the Authority. The Secretariat was requested in this regard to prepare in advance of the meeting a revised version of this instrument. Subsequently, the plenary would proceed with the examination of the draft Agreement concerning the relationship between the International Sea-Bed Authority and the United Nations. A draft of this document will be circulated by the Secretariat for the next session. The Chairman intends to continue his consultations on the draft Headquarters Agreement, on issues related to the Finance Committee and on certain "hard-core issues", in particular decision-making.

45. The Secretariat is in the process of preparing a study on the potential financial implications for States parties to the United Nations Convention on the Law of the Sea, taking specially into account the necessity for economy, and for minimizing the financial burden of States parties, consistent with the current situation.

III. IMPLEMENTATION OF RESOLUTION II

46. The Chairman resumed consultations on the modalities for the implementation of the obligations of the registered pioneer investors during the session. The issue was extensively discussed and substantial progress was made. Due to lack of time, a final conclusion could not be reached. There was agreement among the interested parties that the consultations should resume at the very beginning of the summer meeting in New York, with a view to reaching a final agreement during that meeting.

47. It was also agreed that the framework within which the resumption of the consultations would take place should be constituted by the revised paper of August 1989 presented by the Chairman on the discharge of the obligations by the pioneer investors, by the written response of the pioneer investors to the Chairman's revised paper handed over to the Chairman of the Preparatory Commission and to members of the Group of 16 of the Group of 77 on 27 March 1990 as well as by some ideas that were introduced into the negotiations during the session between members of the Group of 4 and members of the Group of 16 on 28 March 1990. It was also agreed that no new elements should be introduced into this framework. The Chairman added that it was his own impression that the gap between the main proponents had been considerably narrowed and that there was a substantial area of agreement on most issues. He stated that consultations would resume from where they had been left at the session.

IV. ADOPTION OF THE RECOMMENDATIONS OF SPECIAL COMMISSION 2 ON THE IMPLEMENTATION OF THE PREPARATORY COMMISSION TRAINING PROGRAMME

48. At the 55th meeting of the plenary, the Chairman of Special Commission 2 introduced the recommendations of Special Commission 2 on the implementation of the Preparatory Commission Training Programme, as contained in document LOS/PCN/SCN.2/L.7. The recommendations were subsequently adopted by the plenary.

V. COMMEMORATION OF THE ACCESSION TO INDEPENDENCE OF NAMIBIA

49. At a formal session of the plenary held on 21 March 1990, the Preparatory Commission commemorated the accession to independence of Namibia. The plenary heard statements by the Chairman of the Preparatory Commission and the Special Representative of the Secretary-General for the Law of the Sea. Statements were also made by the Chairmen of the regional groups, by the Chairman of the Group of 77 and a number of delegations.

VI. OTHER MATTERS

50. During the session the importance of the momentous issue of the protection and preservation of the marine environment was highlighted. It was suggested that the Preparatory Commission should in its task of regulating sea-bed activities follow

closely the world-wide developments in this field, taking especially into account the upcoming United Nations Conference on Environment and Development to be held in 1992.

VII. SUMMER MEETING OF THE PREPARATORY COMMISSION

51. The Preparatory Commission will hold its summer meeting in New York from 13 to 31 August 1990.

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New York, 13-31 August 1990

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 1 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the outset of this meeting, Special Commission 1 adopted the programme of work recommended by its Bureau: the Special Commission would concentrate on the consideration of the newly issued document LOS/PCN/SCN.1/1990/CRP.16/Rev.1 containing the revised suggestions of the Chairman with regard to the provisional conclusions of the deliberations of the Special Commission; the Ad Hoc Working Group of the Special Commission would concentrate on the consideration of the two new documents, LOS/PCN/SCN.1/1990/CRP.18/Rev.1 and CRP.19/Rev.1, containing the revised suggestions of the Chairman of the Group, dealing, respectively, with the criteria to be applied before an in-depth investigation of the problems of developing land-based producer States arising as a result of sea-bed production, would be conducted, and with assistance to developing land-based producer States likely to be or actually affected by sea-bed production; if time permitted, the Working Group would also deal with the issue of the effects of subsidized mining on developing land-based producer States.

2. The Special Commission held seven meetings, three of which were devoted fully to the deliberations of the Working Group. The Bureau of the Special Commission held two open-ended meetings.

3. At the beginning and throughout the session, delegations were reminded of the exhortations of the Chairman of the Preparatory Commission that the Special Commission provisionally conclude its work by the 1991 summer meeting of the Commission. Some delegations expressed the view that, considering the unique nature of the work of the Special Commission, which was substantive and research-intensive, it should not "rush" in formulating recommendations to the Authority, and should view the time constraint in a proper perspective. Some delegations expressed the need to continue to make progress in the fulfilment of the mandate of the Special Commission.

I. CONSIDERATION OF LOS/PCN/SCN.1/1990/CRP.16/Rev.1

4. Document CRP.16 had been prepared as a step towards the fulfilment of the Special Commission's ultimate mandate of submitting recommendations to the International Sea-Bed Authority on the issues related to the problems of developing land-based producer States arising as a result of sea-bed production and on assistance to those States. The document contained the provisional conclusions of the deliberations of the Special Commission. During the 1989 summer meeting and the eighth session of the Preparatory Commission the provisional conclusions in that document underwent a "first reading" by delegations. CRP.16/Rev.1 has been prepared incorporating the comments and suggestions of delegations in the course of the "first reading".

5. As compared to CRP.16, there are three areas of major changes made in CRP.16/Rev.1:

(a) Consequent to the consensus among delegations that the tasks of the Authority in relation to developing land-based producer States should be accomplished in the most cost-effective manner, at the beginning of the list of provisional conclusions an "umbrella" provision in the form of a chapeau has been included; the chapeau essentially indicates that in the compilation of any data and information and in the conduct of any studies, assessments, or investigations, the Authority should make use of available data, information, analyses, studies, forecasts, etc., and should carry out the tasks in co-operation with, and obtaining support from, relevant global, interregional, regional, subregional and national organizations, whether intergovernmental or non-governmental, public or private.

(b) Pursuant to the general trend observed during the "first reading", the Authority's tasks in relation to developing land-based producer States follow from the applications submitted to the Authority by those States and are not unrelated to the activities which the Authority is required to perform. In this context, the criteria for the identification of developing land-based producer States likely to be, or actually, affected by sea-bed production would be applied in making a determination as to whether sufficient evidence exists to carry out an in-depth investigation on the problems of the developing land-based producer States which had submitted an application; the tasks of assessment of the relationship between production from the Area and land-based production of a developing land-based producer State, quantification of effects of sea-bed production, and study of problems of a developing land-based producer State as a result of sea-bed production are elements of the in-depth investigation that would be carried out on a case-by-case basis, as and when such investigations are called for.

(c) A considerable rearrangement of the provisional conclusions has been made to reflect the sequence of application by developing land-based producer States, the consideration of such applications, and necessary and appropriate action based on such consideration. A number of drafting points suggested by delegations in the course of the "first reading" of the provisional conclusions have also been incorporated.

General discussion

6. The consideration of CRP.16/Rev.1 started with a general discussion. Delegations expressed the view that CRP.16/Rev.1 was a marked improvement over CRP.16.

7. Delegations agreed that the provisional conclusions contained in CRP.16/Rev.1, combined with the suggestions contained in CRP.18/Rev.1 and CRP.19/Rev.1, formed a package. At a later point, efforts should be made to join the various pieces of the package in a coherent fashion.

8. In view of the interrelationships of the contents of CRP.16/Rev.1, CRP.18/Rev.1, and CRP.19/Rev.1, some delegations expressed their difficulties in taking a position on the contents of those documents because they could not be made available to them well in advance for the purpose of study and consultations among the relevant parties. Those delegations would like to review the package as a whole, in due time, and thus made preliminary remarks on CRP.16/Rev.1. In their view, one of the tasks of the Authority was the examination of the submissions presented by developing land-based producer States which were either likely to suffer adverse effects on their export earnings due to sea-bed mining or were actually suffering from those effects. Another task of the Authority, in their view, was to identify existing sources of data concerning the market in the four metals derived from the nodules - copper, nickel, cobalt and manganese - and, when relevant data were not otherwise available, to undertake studies to the extent necessary to enable it to complete its task of identifying developing land-based producer States affected or likely to be affected. They maintained that, if it was proved on the basis of an evaluation of the situation, including a market assessment, that a developing land-based producer State was affected or likely to be affected by sea-bed mining, some action should be taken to assist it. They also expressed their views on what kind of action should be taken. Those views are reflected in the report of the Chairman of the Working Group in connection with the discussion on CRP.19/Rev.1.

9. Some delegations were of the view that the crucial issue was that of assistance to developing land-based producer States, on which the Working Group was deliberating. Another crucial issue was that of isolating the effects of sea-bed mining from those of other factors. They maintained that before they could take a position on CRP.16/Rev.1, they wished to review how these crucial issues were being dealt with, and this would require extensive consultations with domestic agencies.

10. Some delegations emphasized the need for the Authority to carry out its functions in co-operation with relevant organizations. They also emphasized the imperative of cost-effectiveness.

11. Other delegations expressed the view that the provisional conclusions contained in CRP.16/Rev.1 were acceptable to them, in general. A closer examination, conclusion by conclusion, would be required, and the parts of the package contained in CRP.18/Rev.1 and CRP.19/Rev.1 needed to be reviewed; however, in their view all the parts of the package were at the disposal of delegations, and the work of the Special Commission could proceed in a productive manner.

Consideration of individual provisional conclusions

12. The general discussion on CRP.16/Rev.1 was followed by a consideration of the document, provisional conclusion by provisional conclusion. The document contains 17 provisional conclusions preceded by a chapeau, annex I entitled "Background requirements: necessary data and information" presenting six provisional conclusions, and annex II which does not yet exist, but will be produced after the consideration of document LOS/PCN/SCN.1/CRP.10/Add.1 (to be issued before the next session), providing a list of organizations and their measures/programmes/ activities of relevance to developing land-based producer States. A preliminary consideration of all the provisional conclusions in the main body of the document except the ones which are directly related to the issues under consideration in the Working Group, has been completed.

Chapeau

13. The chapeau deals with the issue of the most cost-effective manner in which the Authority should carry out the tasks involving data and analysis, referred to in paragraph 5 (a) above. At the preliminary level, delegations did not have any problems with the chapeau; some delegations, however, emphasized the need to examine it more thoroughly, and added that the identification of existing sources of data was one of the tasks of the Authority.

Provisional conclusion 1

14. This provisional conclusion identifies the minerals of the Area and the metals contained in those minerals with which the Authority would be concerned. Delegations had no problems with it, at the preliminary level. A drafting point was raised that the reference to R2/1(d) should be related to the Conference rather than the Convention.

Provisional conclusion 2

15. This provisional conclusion addresses the issue of forecast of mineral situation with or without sea-bed production. Some delegations suggested that the forecast should be carried out when a plan of work for exploitation was submitted to the Authority. Some delegations suggested that the timing of the forecast should be tied to applications by developing land-based producer States.

Provisional conclusion 3

16. This provisional conclusion deals with application by developing land-based producer States likely to suffer adverse effects from sea-bed production. With regard to paragraph 3 (a), some delegations suggested that applications by developing land-based producer States should be submitted to the Authority rather than the Economic Planning Commission since the latter is a subsidiary body of the Authority. Some delegations were of the view that paragraph 3 (a) imposed too great a burden on the developing land-based producer State applicant; they also suggested that the phrase "four metals" should be replaced by "any metals or non-metallics that may be deemed exploitable in the future". Some delegations

suggested that the wording of paragraph 3 (b) needed to be tightened as there seemed to be some redundancy in the current wording; some delegations suggested that the drafting should be done in such a manner as to provide for reapplication by developing land-based producer States; some delegations were of the view that applications by developing land-based producer States should not be submitted earlier than the time of issuance of the first production authorizations. Regarding paragraph 3 (d), some delegations suggested that in undertaking the in-depth investigation the Authority should act as a catalyst and co-operate with relevant organizations, and that the issue needed to be further examined; some delegations expressed difficulties in accepting the idea of deferment of the matter to other organizations.

Provisional conclusion 4

17. This provisional conclusion deals with applications by developing land-based producer States which consider themselves affected by sea-bed production. With regard to paragraph 4 (a) (ii), some delegations expressed reservations about the inclusion of effects on the economy of developing land-based producer States. As to paragraph 4 (c), similar observations were made to those in connection with paragraph 3 (d).

Provisional conclusion 5

18. This provisional conclusion deals with the criteria for undertaking in-depth investigation of the cases of developing land-based producer States in question, with a view to determining appropriate measures. Some delegations were of the view that the provisional conclusion fell within the mandate of the Working Group; some others agreed, and suggested drafting changes that would facilitate insertion of the outcomes of the work of the Group.

Provisional conclusion 6

19. This provisional conclusion provides an outline of the in-depth investigation to be carried out following a determination that such an investigation is called for in the case of a developing land-based producer State applicant. Some delegations reserved their right to review the provisional conclusion in due time. Some delegations expressed concern about the extent of functions being imposed on the Authority by the provisional conclusion, particularly since there was no clear idea about the initial size of the Authority. Some delegations were of the view that it was worthwhile to indicate the full range of functions pertaining to the full-fledged Authority.

Provisional conclusion 7

20. This provisional conclusion provides certain details with regard to the assessment of the relationship between production from the Area and existing land-based production, which is an element of the in-depth investigation. Some delegations expressed reservations about the provisional conclusion, pending their examination of the chapeau; they also stated that the issue of timing, addressed in paragraph 7 (b), needed further examination. Some delegations questioned the

feasibility of determining the extent to which the developing land-based producer States in question carried out trade in the "controlled market"; they also felt that the relationship between the three periods mentioned in paragraph 7 (b) and the implementation of assistance measures needed to be examined. A drafting suggestion was made with regard to paragraph 7 (b): for the sake of consistency, the phrase "more than 10 years" should be inserted after "long-term basis".

Provisional conclusion 8

21. This provisional conclusion provides certain details as to the potential or actual effects of sea-bed production that are to be quantified in the course of the in-depth investigation. Some delegations felt that this provisional conclusion implied continuous studies of the effects, while in their view effects were to be studied only in connection with in-depth investigations following applications by developing land-based producer States; they also pointed to the need to examine further the relationship of the provisional conclusion to the chapeau. Some delegations suggested that the phrase "potential or actual effects" in paragraph 8 (a) was unclear and should be replaced simply by "effects". Some delegations questioned the appropriateness of mentioning "production from maritime zones under national jurisdiction" in paragraph 8 (c) (ii); some delegations felt that such production should be considered as land-based production. In the view of some delegations, paragraph 8 (c) (ii) had important financial implications which needed to be examined; they also stated that the isolation of the effects of sea-bed production from those of other factors, addressed in paragraph 8 (c) (iii), was one of the most difficult issues and that it called for universal understanding among the participants. Some delegations suggested that the phrase "four metals" in paragraph 8 (c) (iii) should be replaced by "affected metals" for the sake of uniformity.

Provisional conclusion 9

22. This provisional conclusion provides certain detail with regard to the determination of problems of developing land-based producer States linked with effects of sea-bed production, which is an element in the in-depth investigation. Some delegations felt that the timing and the purpose of such determination, to be linked with the application by developing land-based producer States, needed to be clarified; they also expressed the wish to examine the relationship of this provisional conclusion to the chapeau.

Provisional conclusions 10-17

23. These provisional conclusions deal with the determination of measures to assist developing land-based producer States. Delegations felt that they were closely linked with the deliberations of the Working Group, and, therefore, the consideration of these provisional conclusions should be deferred, pending the outcomes of the deliberations in the Group.

II. DELIBERATIONS IN THE WORKING GROUP

24. The Ad Hoc Working Group of Special Commission 1 continued its deliberations on the so-called "hard core" issues, under the Chairmanship of Mr. Luis Giotto Preval (Cuba). There was a general feeling in the Special Commission that at the current stage of its work, more time and effort needed to be expended in the Working Group, and the allocation of time between the Special Commission and Working Group was done accordingly. The report of the Chairman of the Group is contained in the annex to the present report.

25. With regard to the current status of the work of the Special Commission, from now on, intensive efforts need to be undertaken to resolve the "hard core" issues and other unresolved issues in order to "wrap up" its work in due time. The Special Commission should give thought to the requisite allocation of time to, and the form of, such efforts.

III. PROGRAMME OF WORK FOR THE NEXT SESSION

26. With the understanding that delegations would have had ample opportunity to view the package of CRP.16/Rev.1, CRP.18/Rev.1 and CRP.19/Rev.1 as a whole, by the next session, the Special Commission should plan to continue its consideration of CRP.16/Rev.1. The Working Group will continue its deliberations with a view to fulfilling its mandate. Intensive negotiations will be undertaken pursuant to the ideas contained in paragraph 25 above.

27. The Chairman of Special Commission 1 will ensure that document CRP.10/Add.1, referred to in paragraph 12 above, would be issued before the next session in order to facilitate the completion of annex II of CRP.16/Rev.1 (see para. 12 above). Delegations may recall that there are two pending topics, commodity agreements and projections, on which discussion needs to be carried out. The Special Commission would like to request, through the Preparatory Commission, the Secretariat to prepare background paper on at least one of the two topics, preferably commodity agreements, for the next session. The consideration of the background paper, when available, will also be in the agenda of the Special Commission for the next session.

Annex

REPORT OF THE CHAIRMAN OF THE AD HOC WORKING GROUP OF SPECIAL COMMISSION 1

Consideration of LOS/PCN/SCN.1/1990/CRP.18/Rev.1

1. The Group's work started with the consideration of document LOS/PCN/SCN.1/1990/CRP.18/Rev.1. It was the understanding of the Group that when a developing land-based producer State which considers itself likely to suffer adverse effects from, or which considers itself affected by, sea-bed production, submitted an application to the Authority, the Authority would make a determination as to whether sufficient evidence existed to carry out an in-depth investigation; such determination would be made by applying certain criteria expressed in terms of dependency thresholds and trigger thresholds. The revised suggestions of the Chairman of the Group regarding these criteria are contained in document CRP.18/Rev.1.

2. That document attempted to achieve a reconciliation of the views expressed by delegations during the consideration of the suggestions contained in two earlier documents, LOS/PCN/SCN.1/1989/CRP.18 and Add.1. Four important changes have been made in CRP.18/Rev.1:

(a) In response to views expressed by some delegations that three levels of dependency thresholds might cause unnecessary complications, only two levels have been included;

(b) In an effort to reach a compromise between the preference of some delegations that dependency thresholds should be characterized solely by percentages of total export earnings of a developing land-based producer State contributed by one or more of the four minerals concerned, and the position of some other delegations, that dependency thresholds should also be characterized by absolute value of export earnings of a developing land-based producer State from one or more of the four minerals concerned, no specified figures for absolute value of export earnings have been included, but provision is made for consideration of those developing land-based producer States, the absolute value of the export earnings of which from one or more of the four minerals, although not reaching the thresholds characterized by percentages, are large enough to have an impact on their mineral sector and economy;

(c) Figures for dependency thresholds and trigger thresholds and lowered figures for such thresholds in the cases of least developed countries have been changed with a view to facilitating agreement among delegations;

(d) The issue of categorizing developing land-based producer States as affected, seriously affected or most seriously affected by sea-bed production has not been addressed because such categorization could be made only after the in-depth investigations, and not before.

3. During the deliberations, some delegations were of the view that the matters addressed in CRP.18/Rev.1 were highly complex and that sufficient time was needed to study the newly issued document and to consult with domestic agencies; in any case, there was a need for continued research and discussion before compromises could be achieved and any universality of understanding could be ensured. In their view, the concepts of dependency thresholds and trigger thresholds had been introduced in the deliberations of the Special Commission relatively recently, and there was a need for further exchanges of ideas among delegations about those concepts. They also contended that it was difficult to understand what the figures for dependency thresholds and trigger thresholds really meant. They further questioned the basis on which the figures had been specified. Some delegations explained that the concepts and figures might have been based on the System for Stabilizing Export Earnings in the Mining Sector (SYSMIN) of the European Economic Community (EEC) - African, Caribbean and Pacific States (ACP) as a reference, although the figures in SYSMIN were the result of negotiations among the parties concerned. Some delegations preferred to leave the figures for the Authority to specify. Other delegations did not have any problems with the concepts or the figures.

4. Some delegations had reservations regarding the consideration of applications by developing land-based producer States made at an early stage before sea-bed production became a reality. They preferred applications not to be submitted before the issuance of the first production authorizations. Some delegations felt that the trigger thresholds, as specified in paragraph 3 (b), for developing land-based producer States applying before the commencement of sea-bed production, were difficult to apply and should be deleted.

5. Some delegations still objected to the characterization of dependency thresholds by absolute value of export earnings. Other delegations pointed to the need for consideration of the cases of the developing land-based producer States referred to in paragraph 2 (c). In any event, delegations felt that the paragraph needed to be redrafted to eliminate vagueness and possibilities of subjective interpretation. Some delegations made specific proposals about quantifiable thresholds and objective bases for categorization of the developing land-based producer States in this context. Some delegations were of the view that these proposals would entail substantive and technical problems. It appeared to the Chairman of the Group, however, that there was a general trend to accommodate the concerns of the developing land-based producer States which might encounter special difficulties, although their export earnings from one or more of the four minerals concerned might not exceed the specified percentages of their total export earnings.

6. Some delegations objected to the priority to be given to cobalt producers, addressed in paragraph 5 of the document. In the judgement of the Chairman of the Group, based on the deliberations during the Conference, the potential effects of sea-bed production on the cobalt market may justify giving priority to the applicants which are cobalt producers, although the wording in paragraph 5 has to be made clearer that such priority is only in terms of conducting the in-depth investigation.

7. A few drafting suggestions were made by delegations:

Paragraphs 2 (a) and 2 (b). Some delegations suggested that the phrase "before sea-bed production occurs" should be replaced by "before and during sea-bed production occurs";

Paragraph 2 (d). It was pointed out that this was a long and cumbersome subparagraph and should be broken up into two parts. Also, the "reference" period over which the 3-year average would be taken needed to be clarified, preferably in relation to the year of application.

8. Further work. The exchange of views on CRP.18/Rev.1 was very fruitful and pointed to certain general trends which could be pursued further with a view to reaching agreement among delegations. The Chairman of the Ad Hoc Working Group intends to do so by issuing a second revision of CRP.18 before the next session of the Preparatory Commission. The second revision would be along the following lines:

(a) Drafting changes in paragraphs 2 (a), 2 (b) and 2 (d), as suggested by delegations, could be incorporated;

(b) Paragraph 2 (c) could be redrafted to capture the idea that the cases of developing land-based producer States encountering special problems would be addressed appropriately;

(c) Paragraph 3 (b) could be deleted; and

(d) Paragraph 5 could be redrafted to reflect the idea that the "priority" is only in terms of conducting in-depth investigations.

Consideration of LOS/PCN/SCN.1/1990/CRP.19/Rev.1

9. This document attempts to arrive at a compromise among the divergent views of delegations with regard to assistance to developing land-based producer States likely to be or actually affected by sea-bed production, expressed in the course of the deliberations on the suggestions contained in an earlier document, CRP.19. As compared to CRP.19, the revision includes three fundamental changes, which are interrelated:

(a) The objective of assistance to developing land-based producer States would be to address, in the most effective manner, those States' problems, if any, arising as a result of sea-bed production; this objective can be achieved through appropriate measures of economic adjustment assistance which would offset or compensate the adverse effects of sea-bed production. This idea has been incorporated in CRP.19/Rev.1;

(b) There are three ways developing land-based producer States could be assisted, as referred to in provisional conclusions 12, 13 and 14, respectively, contained in CRP.16/Rev.1: (i) through the existing economic measures of global, interregional, regional and subregional organizations; (ii) through bilateral arrangements between developing land-based producer States and their traditional importing partners which would obtain the minerals from sea-bed production; and (iii) through the Authority's own measures. The process through which the most

effective "mix" of these three categories of assistance could be arrived at would be collaboration and mutual support among the Authority, the organizations involved and the trading partners involved. This process has been clearly specified in CRP.19/Rev.1;

(c) The proportion in which each of the three categories would be included in the "mix" appropriate for each case of applicant would be a logical outcome of the process, and this fact is implied in CRP.19/Rev.1.

10. Some delegations reiterated their position that, in view of the fact that the feasibility of sea-bed mining had not yet been determined, the issue of assistance to developing land-based producer States was premature. They also had problems with the wording in many places in the document. Some delegations restated their position that they did not believe compensation would be the most appropriate way of resolving the problems of developing land-based producer States and that the Authority would have sufficient resources to implement economic adjustment measures directly. In their view, the Authority should act mainly as a catalyst, that is, it should promote the appropriate intervention by other organizations. Measures of economic adjustment assistance in favour of affected developing land-based producer States should be implemented essentially by the relevant global, interregional, regional or subregional organizations, in collaboration with the Authority. Some delegations re-emphasized their preference that the Authority should have its own measures, in particular, in the form of a compensation fund. Other delegations supported the suggestions contained in CRP.19/Rev.1.

11. Some delegations suggested that the Authority's own measures should be directly mentioned; otherwise, the Authority might be curtailed from taking measures which are specifically provided for in the Convention. They also pointed out that the wording in paragraph 2 was different from that in the Convention and should be aligned with the Convention. Some delegations questioned the practicability of the Authority's own measures in view of the constraints in resources and expertise it would face, especially in the initial period, and very likely in later periods also. In their view, the only effective way of addressing the problems of developing land-based producer States was economic adjustment assistance and such assistance could require enormous resources. They contended that the Authority could at a later time be in a position to contribute financially to a certain extent, and at that time it could be an active partner along with other organizations in providing assistance to developing land-based producer States.

12. Some delegations suggested that the phrase "serious adverse effects" should be replaced by "adverse effects". Others conceded that the wording in the Convention in this regard did differ in various articles.

13. Future work. It is the assessment of the Chairman that a productive negotiating atmosphere is prevailing in the Group, and this atmosphere should be put to use in furthering the objective of achieving agreement among delegations. To this end, he intends to issue a second revision of CRP.19 before the next session, reflecting the general trends observed during the deliberations. Such a revision would be along the following lines:

(a) The wording in paragraph 2 could be made consistent with that in the Convention;

(b) Greater clarity could be given in paragraph 3 to the references to the three ways of assisting developing land-based producer States and to the fact that the appropriate "mix" of the three in each case would result from the collaborative effort among the Authority, relevant organizations and relevant trading partners;

(c) The Authority's own measures could be mentioned directly. The issue of whether measures would be taken by the Authority, and if so, which ones, could be left to the Authority itself to decide. In this context, the Chairman would urge delegations to examine thoroughly the extent of resource constraints of the Authority, the possibilities of mobilizing resources in spite of the constraints and the most effective way the resources could be utilized, however limited they may be.

Effects of subsidized sea-bed mining on developing land-based producer States

14. At the Group's last meeting, it had an opportunity to initiate discussion on this issue. The Special Commission has at its disposal a proposal by the delegation of Australia on the issue (LOS/PCN/SCN.1/1989/CRP.15).

15. Some delegations pointed out that issues of subsidy directly relevant to the Group's work were being negotiated at the moment in the Uruguay Round of Negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT). These negotiations will conclude by the end of the year, and those delegations maintained that the Group should await the outcomes of the Uruguay Round. Some delegations felt that the provisions contained in CRP.15 reflected reasonable principles, such as the orderly and economically rational manner of resource development and the exploitation of resources to be carried out on an economically viable basis and in accordance with sound commercial principles, and in their view acceptance of these principles should not pose any problem for delegations.

16. In the view of the Chairman, the Ad Hoc Working Group needs to continue its work on this issue during the next session. At that time, it would also have an opportunity to study the outcomes of the Uruguay Round of Negotiations.

UNITED
NATIONS

LOS

UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.84
29 August 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
New York, 13 August-31 August 1990

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 3 ON THE PROGRESS OF WORK IN THAT COMMISSION

I. ORGANIZATION OF WORK

1. During the 1990 summer session of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, Special Commission 3 held 11 meetings, i.e., the 120th to the 130th meeting.

2. Following the usual practice, the Contact Group of the Group of 77 on Special Commission 3 Matters utilized some of the time allocated to meetings of Special Commission 3 for co-ordination purposes.

3. During the session the Special Commission commenced its first reading of LOS/PCN/SCN.3/WP.6/Add.5, part VIII of the draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area: Protection and preservation of the marine environment from activities in the Area. The Special Commission had held a general exchange of views on the document during the spring session at Kingston. That exchange of views had been quite extensive and many of the issues raised then were reiterated during the current session.

4. For the sake of brevity many of the issues raised in Kingston are not reflected in the present report since they are contained in the Chairman's statement to the plenary contained in document LOS/PCN/L.79. The present report should be read in conjunction with that statement in order to understand fully the extent of the discussions held.

II. SEMINAR ON ENVIRONMENTAL ASPECTS OF DEEP SEA-BED MINING

5. The Special Commission began the current session by devoting four meetings to a seminar on the environmental aspects of deep sea-bed mining. Experts from the Federal Republic of Germany, France, Norway, Sweden, the Union of Soviet Socialist Republics, the United States of America, Japan and India participated in the seminar in their personal capacities as guest speakers. Among the issues addressed by the seminar were: environmental aspects of deep sea-bed mining; characteristics of the deep-sea environment; chemical analysis in assessing the environmental impact of sea-bed mining; the relationship between manganese nodule formation and the sedimentary processes in the Clarion-Clipperton area, and its importance for environmental impact studies on deep sea mining in one test area; the impact of sea-bed mining activities over time and space; field and computer simulation for predicting the impact of sea-bed mining on the ocean environment; characterization of manganese nodule processing wastes; the present state of sea-bed mining and environmental research in Japan; the Deep Ocean Mining and Environmental Study (DOMES); relevant research conducted at the Scripps Institution of Oceanography; the need for large-scale experiments and monitoring; the status of sea-bed mining in India; the role of environmental reference zones; optimization of international reference areas and the application of the "precautionary principle" in assessing the impact of deep-sea mining.

6. It is not the intention here to summarize the discussion and the conclusions of the seminar other than to state that its predominant theme was that very little was known at present regarding the consequences of deep sea-bed mining and that it was clear that more substantial research would have to be conducted before any concrete conclusions could be reached. However, it was acknowledged that the information and relevant data provided by the experts would be very useful while dealing with the draft articles of the mining code relating to the protection and preservation of the marine environment. The Office for Ocean Affairs and Law of the Sea does however plan to publish a special edition of the Bulletin which will contain the proceedings of the seminar.

III. ISSUES DEALT WITH IN THE SPECIAL COMMISSION

7. At the conclusion of the seminar, the Special Commission commenced the article-by-article examination of document LOS/PCN/SCN.3/WP.6/Add.5, the draft regulations on the protection and preservation of the marine environment from activities in the Area.

Article 1. Scope of these regulations

8. It was pointed out that given the current prospects for deep sea-bed mining the Special Commission should take the required time to develop adequate precautionary measures to preserve the marine environment and that it was a credit to the authors of the United Nations Convention on the Law of the Sea that they had placed such emphasis on environmental considerations at that time when such issues were not yet in the forefront. It was stressed that much work was needed to be done to refine the wording of certain articles in WP.6/Add.5 covering the scope, terminology, the rights of coastal States and other questions.

9. Another view expressed was that it should be made clear that the rules contained in WP.6/Add.5 were not the only rules aimed at protecting the marine environment and that those rules should also provide flexibility to allow for environmental measures of a higher standard within the contract if agreed to by the parties. A query was raised as to whether prospecting was deliberately not included in the scope of the regulations and several delegations stated that they favoured the inclusion of prospecting within the scope of the regulations.

Article 2. Use of terms

10. It was suggested that the definition should take into account shipboard processing of nodules and there were other suggestions to substitute certain terms in the article, e.g., to replace "atmospheric" by "chemical"; to replace "coastline" by "coastal area".

11. Several delegations had questioned the use of the term "serious harm" during the spring session at Kingston. A lengthy debate was held regarding the use of the term and among the proposals to change it was the term "unacceptable change". That suggestion was not supported by some delegations since they considered it too vague. They felt they could not support the establishment of an environmental committee under the Legal and Technical Commission for the purpose of developing objective environmental standards and making recommendations on environmental matters. They were of the opinion that environmental standards would be established in the mining code, i.e., by the Preparatory Commission, and therefore an Environmental Committee would not be needed.

12. It was further pointed out that several terms used in the article were rather vague and raised certain problems. It was suggested that when more knowledge on the subject had been accumulated more precise phrasing could be adopted. Another proposal was that a distinction should be made between the provisions relating to liability and those concerned with prevention of pollution.

13. Finally it was suggested that preservation reference zones should include a stable reference framework not only for the benthic region but also for the superjacent water column including its upper layer and it was important to ensure that the zone allowed for the study of the overall ecosystem.

Article 104. General obligation

14. Several delegations believed that the reference to the obligation of States to preserve the marine environment was superfluous since it was specified in the Convention itself. It was also proposed that new wording be included calling on the Enterprise and the contractors to take all necessary measures to protect the marine environment from activities in the Area and to ensure that no serious harm resulted in the marine environment or coastal areas from such activities including the dumping of wastes. This proposed provision would also call on contractors to ensure adequate training of personnel.

15. However, it was pointed out on the other hand if this provision were to go into detail about the obligations of the contractor and the Enterprise, the

obligation of States might be left unclear. It was important that liability had to be borne by sponsoring States for activities conducted by those under their jurisdiction that might cause harm to the marine environment. It was suggested therefore that States must be bound by the general obligation of protecting the marine environment.

16. Another view was that no matter how the present text was revised the reference to the obligation to co-operate with the relevant international organizations should be left intact.

17. Another point of view was that continuous monitoring of activities in the Area was indispensable in the light of the information presented in the seminar and that such monitoring even within a single mining site would be highly desirable.

Article 105. Conditions for carrying out activities in the Area

18. It was suggested that the reference to the role of the Council and the Legal and Technical Commission did not belong in article 105 and should be included in a new article. It was also pointed out that it was confusing to allow no activities unless they caused serious harm while on the other hand providing for liability in the event of such harm. It was felt that the concept of serious harm should not be dealt with in this article but should be incorporated in the rules relating to liability.

19. It was also felt that giving the Authority the mandate to set the necessary technical standards in due course would facilitate the reconciliation of contrasting considerations involved in regulating the environmental aspects of deep sea-bed mining, i.e., economic and technical feasibility on the one hand and the protection of the environment on the other.

Article 106. Exclusion of areas for exploitation

20. One point of view expressed was that the approval of a plan of work was contingent on the Authority securing several prerequisites. Averting serious harm to the marine environment was only one such prerequisite and therefore it was important that the procedures for approving those plans should be taken into account in order to avoid placing excessive burden on the contractor.

21. Another point of view was that the exclusion of areas for exploitation by a contractor should not be applied categorically but rather under a graduated system of warnings and appeals. Other delegations stated that they did not agree with the suggestion for graduated warnings but would support a system for appeals to be established.

22. It was also proposed to add a provision covering a number of principles to be observed in the disposal of waste products at sea. This was related to the suggestion made under article 2. It was pointed out that smelting might take place at sea and provision therefore had to be made for the safe disposal of "tailings", i.e., waste materials. It was also important to address the need to develop low-waste mineral processing technology for use at sea.

Article 107. Environmental reference zones

23. It was suggested that such zones should be established before a plan of work was drawn up and that the requirements of such zones be more precisely defined. It was felt that the present wording did not indicate whether the zones would represent a percentage of the Area being mined or whether they would be linked to the rate of mining activity to be carried out by a contractor.

Article 108. Procedure for submission of an environmental report or an environmental impact statement

24. It was proposed to change the wording of paragraph 1 to make clear that environmental data would not be gathered only during the prospecting phase but would continue to be updated during the exploitation phase and that exploitation should begin only after the Legal and Technical Commission had had an opportunity to study the contractor's environmental impact statement.

Article 109. Environmental impact statement

25. One proposal was to amend the text to take into account the possibility of plume effects on phytoplankton and zooplankton at various water levels including fish larvae and not to limit analysis to the effects on those fish larvae only.

26. It was pointed out that the references to "a contingency plan" should be harmonized and a question was raised that if serious harm could result from routine mining activities how could such activities have been authorized under article 105.

27. It was also proposed that in relation to routine operations the text should call for "minimizing pollution" of the marine environment while the words "serious harm" should be used in reference to accidents.

28. However, it was pointed out that the term "serious harm" was ambiguous and might suffice if it referred to accidents but if it was related to systematic harm caused by the contractor's activity in the Area, it had to be clarified. It was therefore suggested that the term "serious harm" should be deleted. It was also suggested that the relationship between such harm and the contractor's choice of equipment was not clear.

Article 110. Consideration of an environmental report or an environmental impact statement

29. It was suggested that environmental impact statements be made available for an adequate period of public review since there was a paucity of environmental information and that by making such statements available for scrutiny institutions and individuals with the requisite knowledge would have an opportunity to submit relevant information to the Legal and Technical Commission to assist it in considering applications from contractors.

30. Another suggestion was that making impact data available to the public should be done in such a way that it should not impinge on the commercial interests of the

applicant and that provision for independent assessment should be linked to the finding of incomplete or defective data in the applicant's impact statement.

31. Another point of view was that the Convention provided for a clear decision-making process on environmental impact statements and therefore the proposal to make available such statements to the general public would introduce an extraneous element. It would make the decision of authorized bodies contingent on public approval.

32. It was pointed out that the Authority would regulate activities in the deep sea-bed area on behalf of mankind as a whole; thus a separate "public" having its own legal personality should not be introduced in the mining code.

33. Another point of view was that the requirements stated in article 109 that environmental statements be made publicly available were sufficient. It was also suggested that article 110 should be amended to provide for obtaining the advice of independent experts. In assessing whether an applicant had fulfilled the requirements, paragraph 5 should authorize the Council to exclude parts of the application areas in cases where evidence indicated "serious risk" that the proposed activities might result in serious environmental harm.

Article 111. Terms and conditions for the protection and preservation of the marine environment

34. Several references were made to the term "serious harm" within the context of the article. Many of these were made vis-à-vis other articles during the discussions in Kingston as reflected in document LOS/PCN/L.79 as well as during the current session and can be found elsewhere in the present report.

35. It was proposed that the term "where practicable" should be deleted since contractors were required to use the best available technology and there was no need for such a qualification.

36. It was also suggested that the information available on the environmental consequences of deep sea-bed mining was currently very limited. Therefore the mining code should be as basic as possible with specific or more precise requirements to be defined at a later stage.

Article 112. Contingency plans

37. It was recommended that the language referring to contingency plans should be harmonized and that the provisions set forth in article 111 should be linked to those found in article 105 on conditions for allowing mining to be carried out.

38. It was also pointed out that it was not clear who would be responsible for carrying out actions described in this article, but it was suggested that since the presumption was that the contractor would be under the jurisdiction of the sponsoring State the contractor should have the responsibility of elaborating contingency plans.

39. Doubts were raised about the use of qualifying terms relating to the requirements to remove polluting substances and to reduce and mitigate environmental harm. It was suggested therefore that phrases such as "as appropriate" and "as far as possible" left too much to the contractor's subjective judgement.

40. It was also pointed out that it would be difficult to remove water-soluble substances from the ocean or the atmosphere and therefore only their reduction should be required.

Article 113. Annual reports

41. It was suggested that the article should be revised so that all contracts could be considered on the same footing on the basis of relevant rules and regulations.

42. Doubts were expressed about the usefulness of making the reports publicly available since there were concerns about the confidentiality of parts of the reports submitted to the Council. On the other hand other delegations believed the requirement that the reports be made public should be retained.

Article 114. Reports of serious harm to the marine environment

43. It was suggested that mechanisms be set up in order to ensure prompt communications between the Authority and regional organizations responsible for protecting the marine environment as well as to provide that the report concerned would also be made available to affected coastal States.

Article 115. Inspectors

44. It was pointed out that provisions should be made in order to ensure that the Authority's inspection would take place at the same time as that of the monitoring States. Furthermore, it was said, it was not the inspectors' task to monitor the effect of the contractor's activities on the marine environment, only whether the contractor had fulfilled his obligations.

45. A question was raised as to what would happen if sponsoring States did not carry out inspections. It was pointed out that within the context of monitoring compliance with the contract, the inspector had to ensure that there was total compliance with the environment regulations contained in the mining code and thus the inspector would in fact be monitoring the environmental effects of the contractor's activities.

46. Several suggestions were made to change the term "monitoring" since it could mean a long-term activity requiring to be monitored. It was suggested that a better term might be "inspection", or "verification", which implied an activity of a short-term duration.

47. Another point of view questioned the usefulness of requiring that the Authority's inspection be compatible with those of sponsoring States and it was

suggested that this provision be deleted. However, it was pointed that there might be a need to provide for the harmonization of the mechanisms for carrying out the various inspections.

Article 116. Compliance

48. It was suggested that the question of compliance could better be dealt with in the context of general obligations and it was proposed to combine this article with article 104.

Article 117. Obligations of the sponsoring State

49. It was pointed out that there was precedent under other international agreements that inspectors who detected problems in the activities of contractors could order the cessation of activities until the problems were rectified. Document LOS/PCN/SCN.3/WP.6/Add.5 did not contain such an obligation and if an inspector's report was to be worthwhile there had to be the requirement that the contractor respond promptly to the issues raised in the report. It was also pointed out that it would be difficult to establish sponsoring States' liability if they did not have the right to conduct regular inspections of the contractor's operations.

50. It was suggested that in cases where there were two or more sponsoring States they should have a joint responsibility to inspect a mining project as well as joint liability. On the other hand doubts were expressed as to whether the draft rules should deal with the responsibility of States. States should not be obligated by the mining code to monitor compliance with its provisions. On the contrary, they should have the right to inspect operations under their jurisdiction.

51. Another suggestion was that sponsoring States should be obliged to conduct inspections because such activity was a prerequisite for liability. It was proposed that in order to avoid confusion about the responsibilities of several sponsoring States, one State should be assigned to act for the others and the question of liability could be settled among the States concerned.

Article 118. Rights and legitimate interests of coastal States

52. It was suggested that the notifications from coastal States should also be transmitted to the Legal and Technical Commission and the Council.

Article 119. Emergency orders

53. It was pointed out that the powers conferred on the Secretary-General under the article were too wide and were not included under article 166 of the Convention. It was proposed that these powers be reserved for the Council.

54. On the other hand it was pointed out that since the Secretary-General would be exercising these powers in emergency cases only, the Council or the Legal and Technical Commission should confer these powers on the Secretary-General for the duration of the emergency only.

Article 120. Authority to take measures to protect and preserve the marine environment

55. It was suggested that the role of the Council should be confined to issuing emergency orders while clean-up measures should be the responsibility of the contractor.

Article 121. Responsibility of the sponsoring State or States

56. One point of view expressed was that the drafting of the article needed improvement and it was pointed out that article 139 of the Convention was clearer on the question of States' responsibilities.

Article 122. Liability for serious harm to the marine environment

57. It was pointed out that liability should be established in accordance with annex III, article 22, of the Convention in regard to liability for "wrongful acts" committed in the course of the contractor's activities in the deep sea-bed area, and therefore a contractor should be held liable only when he committed a wrongful act. However, this did not resolve the question of liability for environmental harm which might arise even when the contractor had fulfilled all his responsibilities under the contract.

58. It was also pointed out that article 22 of annex III went beyond the scope of this article because it dealt with all third-party damage, not only that affecting the environment. The liability covered in this article related to actions resulting in damage to the environment, whether or not the activities could be considered wrongful. Furthermore the environment could not be considered a third party in the same sense as a person or corporation which might suffer damages or losses.

IV. PROGRAMME OF WORK AT FUTURE SESSIONS

59. During the 1991 spring session at Kingston the Special Commission should complete its first reading of document LOS/PCN/SCN.3/WP.6/Add.5. The Secretariat has advised that two new working papers dealing with accounting principles and accommodation of other activities in the Area are in the final stages of preparation. Those two working papers will be circulated to delegations well in advance of the Kingston session so that delegations may be prepared to discuss them during the session.

UNITED NATIONS

LOS

UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.85
29 August 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
New York, 13-31 August 1990

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 2 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. Special Commission 2 held eight meetings at the current session. Its programme of work for the session was contained in paragraph 18 of LOS/PCN/L.80. Five meetings were devoted to the consideration of transitional arrangements for the Enterprise as contained in the Chairman's paper, LOS/PCN/SCN.2/1990/CRP.5. Two meetings were devoted to the provisions of the Convention relating to the structure and organization of the Enterprise (LOS/PCN/SCN.2/WP.16). An Ad Hoc Working Group on the status and structure of the institutional arrangement or arrangements for the transitional period, consisting of the delegations of Argentina, Belgium, Cameroon, the Federal Republic of Germany, Gabon, India, Italy, Japan, Mexico, Nigeria, the Republic of Korea, Senegal, Thailand and Yugoslavia met twice during the session. The Chairman's Advisory Group on Assumptions met four times during the session.

Transitional arrangements for the Enterprise

2. The suggestions advanced in the Chairman's paper on the subject (LOS/PCN/SCN.2/1990/CRP.5) resulted from earlier discussions in the Special Commission and from various working papers prepared by the Secretariat, particularly LOS/PCN/SCN.2/WP.12 and WP.15, which served as the basis of the Special Commission's deliberations.

3. The Special Commision undertook a paragraph-by-paragraph reading of the paper with a view to reaching a consensus on, inter alia, the purpose of transitional arrangements, the functions to be performed under transitional arrangements, the status and structure of the institutional arrangement and rules applicable to the transitional arrangements. In so doing, the Special Commission agreed that form must follow function.

4. In the discussions on the purpose of transitional arrangements, the view was expressed that although the Chairman's paper depicted the Enterprise as evolving from an initial nucleus or core, that did not however imply a separate form. It

was proposed that the core be subsumed under one of the organs of the Authority. Another point of view was for the Enterprise to be set up as a separate entity and not be integrated in one of the organs of the Authority. It was concluded that since the language used in LOS/PCN/SCN.2/1990/CRP.5 was ambiguous and left the question open, it enabled the Authority to decide at a later date what kind of structure there should be.

5. Special Commission 2 agreed that the purposes of transitional arrangements for the Enterprise could be described as those of:

(a) Generally ensuring the continuity of the work initiated by the Preparatory Commission, introducing modifications and additions as required;

(b) Providing a focus within the Authority for the collection and analysis of all information and data pertinent to the development of the sea-bed mining industry;

(c) Providing expert advice on the scientific, technical and economic aspects of the Authority's policies and programmes relating to the Enterprise;

(d) Providing a mechanism for the implementation of the Training Programme for the Enterprise, initiated by the Preparatory Commission.

6. During its deliberations on the functions to be performed under the transitional arrangements, the view was expressed that the nucleus Enterprise's only function should be to monitor and report on all developments in or affecting the sea-bed mining sector. It was pointed out that the fact that sea-bed mining would not be viable for another 15 to 20 years rendered the additional functions contained in CRP.5 not necessary in the initial stages. These functions are:

(a) The elaboration of options available to the Enterprise (as first attempted in LOS/PCN/SCN.2/WP.6 and Add.1 and Corr.1) which in time would entail detailed studies of such aspects as:

(i) The availability of capital from financial markets;

(ii) The particular requirements and implications of a joint venture approach to operations;

(b) The study of available data and information on areas reserved for the Authority to determine which reserved area warranted further exploration; and,

(c) The elaboration of a managerial policy on the basis of which the rules and regulations for the administration of the Enterprise could be formulated.

7. Although there was basic agreement with the need for flexibility in functions during the pre-operational phase, the view was held that the formulation contained in CRP.5 on additional functions reflected the fact that the pre-operational phase was evolutionary. It argued for an active Enterprise whose experts could in due time undertake the studies included in the additional functions. It noted that the

studies would be relied upon and would permit the Enterprise to obtain capital from financial markets when the need arose.

8. On the subject of its monitoring and reporting function, it was felt that the nucleus Enterprise need not carry out primary research in cases where information was already available. It was pointed out that the information on the world metal markets was available in institutions such as the International Bank for Reconstruction and Development (IBRD), the International Monetary Fund (IMF) and the United Nations Conference on Trade and Development (UNCTAD). Information on new developments in sea-bed mining could be obtained from several organizations and information on research regarding the environmental effects of sea-bed mining would in any event be collected by the Authority. Proposals were therefore made to introduce the following language in this function:

> "The performance of this general function should be based on the use of existing data and information and would require a close co-operative relationship with entities engaged in surveying and prospecting or other activities analagous to pioneer activities, as well as national institutions engaged in relevant research and development activities. Equally, it would entail close co-operation with a number of international organizations, such as IBRD, UNCTAD, United Nations Educational, Scientific and Cultural Organization (UNESCO)/Intergovernmental Oceanographic Commission (IOC) and the United Nations Environment Programme (UNEP), as well as the United Nations itself."

9. Another view was that by introducing such language, the Enterprise would be placed in a strait-jacket because it would not be able to obtain information required in areas where gaps existed. It was noted that it would be ludicrous to think that the nucleus Enterprise would go out and do its own research when the information it sought was already available. It was pointed out that the formulation contained in CRP.5 on information and data defined the principle required and that it expressly called for close co-operation between the Enterprise and the international organizations referred to in the paper.

10. The Ad Hoc Working Group on the status and structure of the institutional arrangement met twice. With regard to this subject the Group agreed that an evolutionary approach was necessary, involving minimal financial implications. The Group was not able to arrive at a conclusion on the priorities to be assigned. It was the opinion of the Group that the Chairman should assess the need for continuing with this dialogue at the next session.

Structure and organization of the Enterprise

11. The Special Commission continued its article-by-article reading of its working paper 16, concentrating on the identification of those provisions of the Convention which called for annotations of various kinds. It will be recalled that the understanding in the Special Commission is that annotations would serve several purposes: to allow the Preparatory Commission to comment on provisions of the Convention in the interest of promoting reasonable interpretation; to suggest supplementary draft provisions to facilitate effective application; and to suggest

additional draft rules on matters such as the confidentiality requirement, on which the Convention has no rule relating to the Enterprise.

12. It was suggested that in paragraph 3 of article 3 (Purposes of the Enterprise), as a result of the need to preserve the marine environment, reference should be made to regulatory requirements in addition to commercial considerations. While the need to preserve the marine environment enjoyed the full support of the Special Commission, it was pointed out that the article was not the place in which to reflect this concern.

13. A view was expressed that the reference to "special interests" in article 11 (Equitable geographical distribution and the representation of special interests) was inaccurate. It was pointed out that the provision used as its basis article 163, paragraph 4, of the Convention when the more relevant article was article 5, paragraph 1, of annex IV. It was noted that in the latter article of the Convention no reference was made to "special interests". Other delegations expressed their satisfaction with the present provision contained in the working paper.

14. It was re-emphasized that article 23 on confidentiality would require redrafting and further elaboration. In paragraph 1, the question was raised as to the power of the Governing Board to impose sanctions for breach of confidentiality in relation to the post-employment period. It was pointed out that in municipal law sanctions were limited to a certain period of time. In respect of paragraph 2, a question was raised as to which organ had the competence to establish financial liabilities and their extent. It was also pointed out that as breaches may vary in magnitude, sanctions would need to reflect that. It was noted that the article on confidentiality would be equally applicable to the pre-operational Enterprise.

Draft basic joint venture contract

15. At its 105th meeting, the Special Representative of the Secretary-General for the Law of the Sea introduced a working paper on a draft basic joint venture (LOS/PCN/SCN.2/WP.18 and Add.1). In introducing the paper, the Special Representative pointed out that joint venture arrangements as a method of operation for the Enterprise had been the subject of consideration by the Preparatory Commission at various times since 1983.

16. The working paper outlines the different types of joint ventures open to the Enterprise, as well as providing a model joint venture contract. Of the two types of joint ventures, incorporated and contractual, the paper points out that the latter might offer advantages for the Enterprise as well as for other entities. Joint ventures, the paper also states, could also be used for reserved and unreserved areas in order to limit capital and loan requirements of the Enterprise, to reduce risks and liabilities, to provide training opportunities and to facilitate the transfer of technology.

Assumptions

17. The Chairman's Advisory Group on Assumptions devoted its discussions to the current market developments in respect of nickel, copper, cobalt and manganese and

continued to examine economic and technical factors and parameters for arriving at a new set of basic assumptions for a deep sea-bed mining model.

18. On the basis of statistics compiled by the Secretariat and a note presented by the Australian expert, it was observed that prices for nickel appeared to be stabilizing at fairly high levels after a sharp fall at the beginning of the year. Copper prices had fluctuated during 1990 and remained well above the average. The price of manganese had maintained a buoyant tendency, and the cobalt price was still stable.

19. The current prognosis for the nickel market is modest but the industry regards the present level of the price of nickel as more normal than the highs recorded in 1988-1989. This price appears to be profitable for existing nickel producers. Copper prices are expected to continue to be firm for the remainder of 1990 as stocks are low and demand is outstripping supply. Prices for manganese are likely to remain strong until the mid-1990s. The outlook for cobalt is for continued stability during the medium to long term, barring major economic upheavals.

20. The Group continued to examine the summary of the French study contained in the Proceedings of the Offshore Technology Conference and compared the main economic and technical factors and parameters with respect to the Australian study in order to arrive at a set of basic assumptions different from those used in LOS/PCN/SCN.2/WP.10 and Add.1. The Group identified areas where further clarifications were needed as well as crucial assumptions which should be introduced into the Australian model. It was decided to contact the GEMONOD group during the inter-sessional period in order to obtain further details so that a new set of assumptions could be established by the Group and approved if possible at the next Kingston session and then incorporated into the Australian model. The new results which could be achieved might be of interest to the Preparatory Commission.

21. Special Commission 2 was of the view that in the light of the possible agreement on the obligations of the registered pioneer investors, the Training Panel should be put in place at the current session and should begin to implement the first and possibly second phase of the Training Programme.

Programme of work for the ninth session

22. The programme of work will be as follows:

(i) Transitional arrangements for the Enterprise: finalization of recommendations;

(ii) Structure and organization of the Enterprise: recommended annotations on LOS/PCN/SCN.2/WP.16;

(iii) Operational options referred to in LOS/PCN/SCN.2/WP.18 and Add.1;

(iv) Other matters arising from paragraph 12 of resolution II, including its subparagraphs 12 (a) (i), 12 (a) (iii) and 12 (b), on which recommendations may be needed.

UNITED
NATIONS

LOS

UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.86
30 August 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
New York, 13-31 August 1990

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. During the summer meetings of the eighth session of the Preparatory Commission, the Special Commission had before it, in addition to the documents from previous sessions, the following documents:

(a) LOS/PCN/SCN.4/WP.8, Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea;

(b) LOS/PCN/SCN.4/WP.8/Add.1, Addendum to the administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (Supplementary cost estimates reflecting alternatives as to official working languages);

(c) LOS/PCN/SCN.4/WP.9, Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (Draft agreement on co-operation and relationships between the United Nations and the International Tribunal for the Law of the Sea);

(d) LOS/PCN/SCN.4/WP.9/Add.1, Addendum to the Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (Arrangements regarding the United Nations common system of salaries and benefits, and participation in the United Nations Joint Staff Pension Fund);

(e) LOS/PCN/SCN.4/L.14, Chairman's summary of discussions on the Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea;

(f) LOS/PCN/SCN.4/WP.10, Principles governing a relationship agreement between the International Tribunal for the Law of the Sea and the International Sea-Bed Authority;

(g) LOS/PCN/SCN.4/WP.8/Add.2, Addendum to the Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (A scheme to phase in the establishment of the International Tribunal for the Law of the Sea);

(h) LOS/PCN/L.81, Statement to the Plenary by the Chairman of Special Commission 4 on the progress of work in that Commission during the eighth session.

2. On the recommendation of its Bureau, Special Commission 4 had decided during the eighth session at Kingston to commence its work at the current session with the continuation of the consideration of LOS/PCN/SCN.4/WP.8 dealing with the administrative arrangements, structure and financial implications for the International Tribunal for the Law of the Sea; the supplementary cost estimates reflecting alternatives as to official working languages of the Tribunal (LOS/PCN/SCN.4/WP.8/Add.1); and a scheme to phase in the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8/Add.2).

3. The Special Commission was next to continue the examination of the draft agreement on co-operation and relationships between the United Nations and the Tribunal (LOS/PCN/SCN.4/WP.9 and Add.1). Thereafter, the Special Commission was to take up the principles governing a relationship agreement between the Tribunal and the Authority (LOS/PCN/SCN.4/WP.10).

4. The Special Commission had also agreed that the Chairman of the Commission would continue his informal consultations on the questions related to the Seat of the Tribunal with a view to coming to a generally acceptable solution.

5. The Special Commission held a total of eight meetings, starting with the 118th meeting. The Special Commission devoted most of its meetings to continuing the consideration of the draft relationship arrangement between the United Nations and the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.9). The Commission began its consideration with article 8, as the previous articles had already been discussed at the Kingston session. A number of suggestions were made in the course of the discussion. One of them was to keep the agreement as short as possible and not to subordinate the Tribunal to any other international organization, including the United Nations. Delegations reiterated the need for maximum economy in the establishment of the Tribunal and its functioning while maintaining the highest possible level of efficiency.

6. The Special Commission conducted an exchange of views on the number of official working languages of the Tribunal during its examination of document WP.8/Add.1 on the administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea - supplementary cost estimates reflecting alternatives as to official working languages.

7. During the exchange of views, several delegations indicated that they would prefer the option of two official languages for the Tribunal, while others, although recognizing the wisdom of two official working languages during the phasing-in period of the Tribunal, also expressed the wish to see provisions made for the unofficial translation of all the pleadings, judgments and decisions of the

Tribunal into the other four official languages of the United Nations, after completion of each application, case or advisory opinion. The translation should be done under the strict supervision of the Tribunal. It was suggested that provision should be made for six official languages as and when the work of the Tribunal increased.

8. Some delegations showed a preference as to which should be the official languages, while others reserved their positions on the matter and requested that the Special Commission, at an appropriate time, hold a full discussion on the issue.

9. The 124th and 125th meetings were devoted to the consideration of working paper 10 on the principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Sea-Bed Authority. The Special Commission discussed the document part by part, in particular, the preamble; the governing principles and mutual recognition of responsibilities, rights and obligations; consultation, co-operation and co-ordination; exchange of information and documents; administrative co-operation and personnel arrangements; and budgetary and financial arrangements. During the discussion some delegations expressed the view that a decision of principle would have to be taken as to the necessity for the Tribunal to conclude a relationship agreement with the Authority, since this would tend to influence some decisions of the Tribunal. They felt that the independence of the Tribunal should be maintained at all costs.

10. Informal consultations on the Seat of the Tribunal were not held during the current session since Dr. Gunter Goerner, Chairman of the Commission, was not present due to illness. Those consultations will be included in the programme of work for the next session.

11. Concerning the programme of work for the ninth session, on the recommendation of the Bureau, the Special Commission agreed, at its 124th meeting, to consider the following subjects:

(i) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea - a scheme to phase in the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8/Add.2);

(ii) Consideration of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea and report of the host country on the progress of work in this respect; other issues related to the Seat of the Tribunal may be considered in this context;

(iii) Elements of supplementary arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice;

(iv) Review of the re-drafts of the Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany;

(v) Review of the re-drafts of the Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea.

Another task during the summer meetings of the ninth session is for the Chairman of the Special Commission to continue his informal consultations on the questions related to the Seat of the Tribunal with a view to coming to a generally acceptable solution.

12. The Secretariat was therefore requested to prepare a second revision of the draft headquarters agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Rev.1, Parts I and II), taking into consideration the amendments and suggestions put forward by delegations during the discussion of those documents.

13. The Secretariat was also requested to prepare a re-draft of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6). The Secretariat was requested to take into consideration suggestions made by delegations as to the harmonization of certain provisions of that document with the provisions of the headquarters agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany.

14. The Acting Chairman expressed his gratitude and appreciation to delegations for their continued co-operation with the Chair and their constructive approach to the discussions. He also offered thanks to the members of the Bureau, Mr. Enrique Peñalosa (Colombia), Mr. Jorge Coquia (Philippines) and Mr. Kuol Alor Kuol (Sudan), for the helpful guidance and competent advice they had given him also during the current session. The Acting Chairman also extended his and the Commission's gratitude to the Special Representative of the Secretary-General of the United Nations, Mr. Satya N. Nandan; as well as the Secretary of the Special Commission, Mr. Gritakumar E. Chitty; to Mr. Roy Lee; to Mrs. Gertrude Blake; to Mr. Joel Hernandez; to Miss Alice Hicuburundi; and to Ms. Grace Sistoso, as well as to the other members of the Secretariat for the valuable and competent services they had again rendered to the Commission, especially in preparing and submitting various working papers and drafts. The Acting Chairman and the Commission requested the delegation of the German Democratic Republic to convey to Dr. Goerner the concern of the members of the Special Commission and their wishes for his speedy recovery.

UNITED
NATIONS

LOS

UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
LIMITED

LOS/PCN/L.87
30 August 1990

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
New York, 13-31 August 1990

STATEMENT BY THE CHAIRMAN OF THE PREPARATORY COMMISSION

1. During the present session, the plenary dealt with the following matters:

(a) Organization of work;

(b) Preparation of draft agreements, rules, regulations and procedures for the Authority;

(c) Implementation of resolution II.

I. ORGANIZATION OF WORK

2. On 13 August 1990, on the recommendation of the General Committee, the plenary adopted a programme of work for the current session of the Commission which enabled all the special commissions and the plenary on the Authority to meet. The programme was adopted on the understanding that changes would be made as circumstances required.

II. PREPARATION OF DRAFT AGREEMENTS, RULES, REGULATIONS AND PROCEDURES FOR THE AUTHORITY

3. At the meeting held on 14 August 1990, the Chairman outlined his plan for the organization of the work of the plenary on the Authority at the current session. It was subsequently circulated in document LOS/PCN/1990/CRP.41. As in the past, the proposed programme of work envisaged that part of the time allocated to the plenary would be devoted to the consultations of the Chairman with the interested delegations on such issues as functions, composition and decision-making of the Finance Committee, the "hard-core issue" of decision-making in general and the articles which had been left pending during the consideration by the plenary of the draft Headquarters Agreement and the draft Protocol on the Privileges and Immunities of the International Sea-Bed Authority.

4. At the current session the plenary commenced its work with the second reading of the draft Protocol on the Privileges and Immunities of the International Sea-Bed Authority, a revised text of which had been circulated by the Secretariat on 26 June 1990 in document LOS/PCN/WP.49/Rev.1.

5. The plenary devoted two meetings to the examination of the draft Protocol and as a result provisionally approved without amendments the preamble, except for the second paragraph, and articles 1, subparagraphs (a), (b), (c), (f), (g), (i), (j), (k), (l), (m), (n); 4; 5; 6; 7, paragraphs 1 and 3; 8; 9, paragraphs 1, 2 and 4; 11; 12; 14; 15; 16; 17, paragraph 1 (c), (d), (e), (f), (h), (i); paragraphs 2, 3, 4; 18, paragraph 1 and 2, subparagraphs 2 (c), (d), (e), (g); 21, paragraph 1 (c), (d), (e), (g), (h), and paragraph 2; 22-27; 29-31.

6. The plenary provisionally adopted as orally amended the second paragraph of the preamble and draft articles 1, subparagraph (h); 9, paragraph 3; 17, paragraph 1 (a); 18, title, paragraph 2 (a) and (h); 19, title; and article 21, paragraph 1 (a).

7. It was decided that article 7, paragraph 2, and article 28 should be deleted.

8. Article 17, paragraph 4, was approved on the understanding that under its provisions a State is not prohibited from providing to its nationals the privileges and immunities referred to in paragraphs 1 and 2 of the same article.

9. The plenary could not reach an agreement on the text of articles 1, subparagraphs (d) and (e); 3; 10; 13; 17, paragraph 1 (b) and (g); 18, paragraph 2 (b); 20; 21, paragraph 1 (b) and (f). Those articles were referred to the consultations to be undertaken by the Chairman with the interested delegations at the next session.

10. It should be noted that although articles 3 (Legal personality and capacity of the Authority) and 10 (Legal capacity of the Enterprise) are listed as pending, the texts of similar articles in the draft Headquarters Agreement have already been discussed at the level of consultations and subsequently approved by the plenary. Therefore articles 3 and 10 would probably be drafted as suggested and provisionally adopted as in the case of the Headquarters Agreement.

11. As indicated above, article 1, subparagraphs (d) and (e), will be considered at the consultations. At the same time the plenary has already decided that their order should be reversed and subparagraph (e) should be placed before subparagraph (d).

12. In accordance with the programme of work, the Chairman continued the consultations with the interested delegations on the pending articles of the draft Agreement between the International Sea-Bed Authority and the Government of Jamaica regarding the Headquarters of the International Sea-Bed Authority (draft Headquarters Agreement). To facilitate the determination of the provisions in the articles on the privileges and immunities, where reference to spouses and dependent members of the families should be included, the Secretariat circulated document LOS/PCN/1990/CRP.39 containing precedents of such provisions in some other headquarters agreements.

13. Having held three meetings, the participants in the consultations successfully resolved almost all difficulties remaining with regard to the draft Headquarters Agreement.

14. On 24 August 1990, the Chairman submitted to the plenary for its approval a package of articles of the draft Headquarters Agreement referred to the consultations, with the exception of articles 33, 34 and 37, the text of which has not yet been finalized.

15. The plenary endorsed the outcome of the consultations as reported by the Chairman. It was decided that articles 1, subparagraph (1); 4, paragraph 7; 9, paragraph 5; 26, paragraph 1; and 48 should remain as drafted in the revised text of the draft Headquarters Agreement (LOS/PCN/WP.47/Rev.1).

16. It was noted that with regard to article 4, paragraph 7, a suggestion was made to include the words "or in the rules of the Authority". Those words were not incorporated into the text because it was understood that the approval of plans of work and contractual arrangements falling under the Mining Code would be regulated by the United Nations Convention of the Law of the Sea itself.

17. Article 48 was approved on the understanding that it should be seen as reflecting the need for giving a certain flexibility to the Government in taking security measures. It was agreed that the article implied that whenever any measures were to be taken there should be consultations between the Authority and the Government of the host country with regard to such measures.

18. The plenary accepted the proposal to delete from the text of the draft Headquarters Agreements articles 30, 35, paragraph 3, 41 and 50.

19. Article 30 was deleted on the understanding that the Government of Jamaica would do its best to assist missions and their members, in accordance with the established international practice, in obtaining suitable premises and accommodations.

20. The plenary provisionally approved articles 3; 18, subparagraph (c); 27, paragraphs 4 and 6; 34, subparagraph (b); 37, subparagraphs (b) and (c); 40, paragraph 1; and 52, paragraph 2, with the amendments suggested by the participants in the consultations.

21. No decision was taken on article 55 concerning the relationship between the Headquarters Agreement and the Protocol on the Privileges and Immunities of the International Sea-Bed Authority, pending the outcome of the consultations to be undertaken by the Chairman at the next session on some of the articles of that Protocol.

22. As far as articles 33, 34 and 37 are concerned, the Chairman informed the plenary that consultations were still continuing on the provisions of those articles relating to the privileges and immunities of spouses and dependent members of their families. Therefore, depending on the success of the consultations, those provisions would be submitted for approval by the plenary at the next session at Kingston.

23. In the course of the current session, the Chairman continued his consultations with interested delegations on matters of concern to the Finance Committee. Three main issues, namely functions, composition and decision-making, which had been discussed in the past, remained as agenda items of the consultations.

24. As had been requested in Kingston, the Secretariat, in order to assist further discussions, prepared and circulated a revised "Preliminary list of functions of the Finance Committee" (LOS/PCN/1990/CRP.38/Rev.1), which had been drafted taking into account the opinions expressed by the participants in the consultations at the previous session.

25. The Chairman is pleased to report that during the consultations some progress has been achieved on the issues of the functions and composition of the Finance Committee.

26. A revised list of functions received a very careful and thorough examination at the current session. Although concern was expressed with regard to a few specific functions, there was substantial agreement on most of the functions outlined in the list.

27. The view was expressed, for example, that function No. 3 should be understood as having been drafted without prejudice to the fact that the Finance Committee is a subsidiary organ to both the Assembly and the Council.

28. With reference to function No. 8, it was noted that its text lacks precision and therefore should be improved taking into account some of the ideas expressed in Kingston with regard to functions Nos. 10 and 17 of the previous list (LOS/PCN/1990/CRP.38).

29. In relation to the deletion of former function No. 7, some of the participants were of the view that it should be reinstated. It was observed at the same time that since the approval of plans of work falls under the purview of the Legal and Technical Commission the inclusion of this function could result in the conflict of jurisdiction between these two subsidiary organs. The opinion was expressed that this could be avoided if, on the matters referred to in the former function No. 7, the Finance Committee would submit its recommendations to the Legal and Technical Commission instead of to the Council. The participants in the consultations decided to include, for the time being, a footnote to the list of functions of the Finance Committee stating that once the procedures for the approval of plans of work have been clarified, this matter should be reviewed once again in the light of all opinions expressed during the consultations.

30. With regard to the composition, no new elements were suggested. Therefore, the future discussions will continue to evolve around the three elements which have already been identified and referred to in paragraph 25 of the Chairman's report on the work of the Preparatory Commission at the eighth session (LOS/PCN/L.82/Rev.1). These elements are the following: representation of special interests; equitable geographical representation; and representation of highest contributors. It was understood that the criterion of the highest contributors could be relevant only

until the Authority became self-financed. The demand to keep a reference to equal representation was dropped at the current session. However, the participants concerned reserved the right to return to it depending on how other issues were resolved.

31. On the question of decision-making in the Finance Committee, it was concluded that since it was closely linked to the decision-making procedures in other organs of the Authority. The question should be dealt with at the consultations, where the hard-core issue of decision-making would be addressed in its entirety.

32. As agreed at the previous session, the consultations of the Chairman with the interested delegations on "hard-core issues" were devoted at the current session to decision-making procedures. It appears from the discussion that an agreement should be sought by trying to approach the decision-making procedures, both established and to be established, in various organs of the Authority altogether. It appears that in order to facilitate a compromise on the issue of decision-making delegations may wish to consider the issue in the light of the results to be obtained from consultations on the composition of the organs of the Authority. Therefore, the issues of decision-making and composition should be tackled together in the future.

33. At the end of the session, at a meeting of the plenary held on 28 August 1990, the Special Representative of the Secretary-General for the Law of the Sea, Mr. Satya N. Nandan, introduced a paper on "Administrative arrangements, structure and financial implications of the International Sea-Bed Authority" (LOS/PCN/WP.51), prepared by the Secretariat. The plenary had a very preliminary exchange of views on the paper, which will be the subject of consideration at the next session.

34. On the same date, the "Draft Agreement concerning the Relationship between the United Nations and the International Sea-Bed Authority" (LOS/PCN/WP.50) was introduced by the Executive Secretary of the Preparatory Commission, Mr. L. Dolliver M. Nelson. Having heard several general comments with regard to the draft relationship agreement, the plenary decided to start its article-by-article examination at the session to be held at Kingston in 1991.

35. On the question of the programme of work of the plenary on the Authority, it was decided that at the next session the plenary would undertake a first reading of the draft Agreement concerning the Relationship between the United Nations and the International Sea-Bed Authority and the paper on "Administrative arrangements, structure and financial implications of the International Sea-Bed Authority". The Chairman will also continue his consultations on the articles left pending during the consideration of the draft Protocol on the Privileges and Immunities of the International Sea-Bed Authority and the draft Headquarters Agreement, as well as the issues relating to the Finance Committee and on the hard-core issue of decision-making.

III. IMPLEMENTATION OF RESOLUTION II

36. On 22 August 1990, the Preparatory Commission received an application from China (see LOS/PCN/113) on behalf of the China Ocean Mineral Resources Research and Development Association (COMRA) for registration as a pioneer investor under resolution II of the Third United Nations Conference on the Law of the Sea and document LOS/PCN/L.41/Rev.1, annex.

37. Pursuant to rule 14, paragraph 3, of the rules of procedure of the Preparatory Commission which stipulates that the General Committee shall act on behalf of the Preparatory Commission as the executive organ for the implementation of resolution II of the Third United Nations Conference on the Law of the Sea, the General Committee met on 30 August 1990 and decided:

> "1. To convene a meeting of the Group of Technical Experts to examine and report to the General Committee on said application, in accordance with the provisions of document LOS/PCN/L.41/Rev.1 of 5 September 1986, for a period not exceeding one week from 10 to 14 December 1990 in New York;
>
> "2. To authorize the Secretary-General to pay the travel costs and per diem of the members of the Group of Technical Experts and other incidental expenditures related to the processing and registration of the application out of the special account established for the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea from the registration fees paid by the pioneer investors. The expenditures incurred for the registration of the application submitted by China are to be charged against the fees to be paid by China for such registration as required under resolution II".

38. The General Committee of the Preparatory Commission will be convened during its ninth session to be held at Kingston, in February-March 1991 in order to consider the application for registration as a pioneer investor submitted by China, taking into account the report and the recommendations of the Group of Technical Experts (LOS/PCN/1990/CRP.43).

39. As had been agreed, during the current session the Chairman resumed consultations on the modalities for the implementation of the obligations of the registered pioneer investors. These consultations, which had been initiated at the sixth session of the Preparatory Commission at Kingston in 1988 and which had required intense negotiations and a great deal of innovative effort as well as a spirit of compromise and understanding on the part of all participants, finally reached a successful conclusion. The General Committee, on behalf of the Preparatory Commission unanimously adopted on 30 August 1990 the Understanding on the Fulfilment of Obligations by the Registered Pioneer Investors and their Certifying States (contained in the annex to the present report).

40. On the adoption of that Understanding, the Chairman made the following statement:

"(a) Should any agreement be made which would affect in any way this Understanding, such adjustments as may be necessary shall be made to it;

"(b) The required date for the submission of a plan of work by each registered pioneer investor under resolution II, paragraph 8 (a), shall be reviewed in the light of the assessment of the Group of Technical Experts in accordance with paragraph 12 of the Understanding."

41. I should add that this matter was also examined against the background of the report of the Group of Technical Experts (LOS/PCN/BUR/R.5), and the uncertainty regarding the commencement of commercial production of minerals from the deep sea-bed due to market conditions, development of technology and the need to protect the marine environment.

42. In accordance with paragraph 22 of LOS/PCN/L.41/Rev.1, annex, the statement mentioned in paragraph 40 above applies mutatis mutandis to the potential applicants.

IV. NINTH SESSION OF THE PREPARATORY COMMISSION

43. The Preparatory Commission will hold its ninth session at Kingston from 25 February to 22 March 1991.

Annex

UNDERSTANDING ON THE FULFILMENT OF OBLIGATIONS BY THE REGISTERED PIONEER INVESTORS AND THEIR CERTIFYING STATES

1. This understanding applies to the four registered pioneer investors, namely, the Government of the Republic of India, the Institut Français de Recherche pour l'Exploitation de la Mer (INFREMER), the Deep Ocean Resources Development Co. Ltd. (DORD), and the Soviet State enterprise Yuzhmorgeologiya, and to their respective certifying States, namely, India, France, Japan and the Union of Soviet Socialist Republics.

2. The four pioneer investors shall provide training pursuant to paragraph 12 (a) (ii) of resolution II in conformity with the specific programme for training approved by the Preparatory Commission in accordance with the Principles, Policies and Guidelines contained in documents LOS/PCN/SCN.2/L.6/Rev.1 and LOS/PCN/SCN.2/L.7 and taking into account the report contained in document LOS/PCN/BUR/R.6. It is agreed that the cost of such training shall be borne by the four registered pioneer investors and shall be free of cost to the Preparatory Commission. The precise number of trainees, the duration and the fields of training shall be agreed upon between the Preparatory Commission and each registered pioneer investor according to its capabilities. It is further agreed that the first group of trainees shall consist of no less than 12 individuals.

3. In accordance with paragraph 12 (a) (iii) of resolution II, the four registered pioneer investors undertake to perform the obligations prescribed in the Convention relating to the transfer of technology, and further agree that training in the use of all available technology shall constitute a substantial component of the training programme referred to in paragraph 2 above.

4. The periodic expenditures for exploration to be incurred in accordance with paragraph 7 (c) of resolution II by the four registered pioneer investors in respect of the development of their respective pioneer areas shall be determined by the Preparatory Commission in consultation with and with the co-operation of each registered pioneer investor within 12 months of the adoption of this understanding. Such expenditures shall be reviewed by the Preparatory Commission from time to time in consultation with and with the co-operation of the registered pioneer investor concerned.

5. Each of the four certifying States agrees to provide, in accordance with article 12 (b) (ii) of resolution II, periodic reports to the Commission on the pioneer activities as defined in paragraph 1 (b) of resolution II, carried out by it or by its entities or natural or juridical persons in their respective pioneer areas. Such reports shall be provided annually.

6. The Commission recognizes that the obligation of each certifying State under paragraph 12 (b) (i) of resolution II is to be implemented upon entry into force for that State of the 1982 United Nations Convention on the Law of the Sea.

7. Regarding paragraph 14 of the statement on the implementation of resolution II (LOS/PCN/L.41/Rev.1, annex), and taking into account the plan for exploration prepared by the Group of Technical Experts (LOS/PCN/BUR/R.5) for one mine site in the areas reserved for the Authority, the three registered pioneer investors whose pioneer areas are located in the North-East Pacific (France, Japan and the Soviet Union) shall undertake in respect of the areas specified in the plan for exploration referred to above the following activities:

(a) Preparatory work in accordance with paragraphs 9 to 15 of LOS/PCN/BUR/R.5;

(b) Stage I of the plan for exploration in accordance with paragraphs 25 to 35 of LOS/PCN/BUR/R.5.

8. (a) The preparatory work referred to in paragraph 7 of this understanding shall begin to be implemented no later than six months following the adoption of this understanding and shall be completed in accordance with paragraph 15 of LOS/PCN/BUR/R.5. Upon completion of the preparatory work the results shall be submitted to the Preparatory Commission;

(b) The work for stage I of the plan for exploration shall begin to be implemented no later than the end of the second fiscal year after the completion of the review of the results of the preparatory work by the Group of Technical Experts in accordance with paragraph 17 of LOS/PCN/BUR/R.5, and shall be completed within three years of the commencement of that stage in accordance with paragraph 34 of document LOS/PCN/BUR/R.5;

(c) The cost of the preparatory work and stage I of the plan of exploration shall be borne by the three registered pioneer investors and shall be free of cost to the Preparatory Commission.

9. As regards the implementation of stage II of the exploration plan (LOS/PCN/BUR/R.5) for the area reserved for the Authority by the three pioneer investors, it is the understanding that this will be agreed upon following the completion of stage I and the review of the results obtained, and taking into account the decision of any pioneer investor to undertake stage II of the plan of exploration in the areas allocated to it. The terms and conditions for such further exploration shall be agreed upon in accordance with resolution II, paragraph 12 (a) (i).

10. Provided that the obligations under paragraphs 2, 7 and 8 above have been satisfactorily complied with, the obligations of the three registered pioneer investors, France, Japan and the Soviet Union, under resolution II, paragraph 7 (b), to pay $US 1 million per annum shall upon the completion of stage I of the exploration plan be waived as of the date of their registration.

11. India, which has its pioneer area in the South Central Indian Ocean, will undertake, if so requested by the Preparatory Commission, a programme of exploration in accordance with the provisions of resolution II, paragraph 12 (a) (i), of one mine site for the Enterprise in the area reserved for the Authority in the Indian Ocean and, as part of the overall understanding

contained in the present document, the obligation of India under the provisions of paragraph 7 (b) of resolution II shall be waived as of the date of its registration.

12. Within three months of the deposit of the sixtieth instrument of ratification or accession, the Group of Technical Experts established in accordance with paragraph 6 of document LOS/PCN/L.41/Rev.1, annex, shall review the state of the deep sea-bed mining and make an assessment of the time when commercial production may be expected to commence. If, as a result of the review and the assessment, the Group of Technical Experts concludes that commercial production will not take place for an extended period of time, the Preparatory Commission shall recommend to the Authority that the annual fixed fee payable under annex III, article 13, paragraph 3, be waived for a relevant period.

13. Each registered pioneer investor participating in the activities under paragraph 7 of the present understanding shall submit a comprehensive annual report to the Preparatory Commission on the type and extent of activities undertaken by it and details of expenditures incurred during that year, as well as a list of data and information, gathered as a result of these activities.

14. The details of the data and information gathered as a result of the exploration activities under paragraph 7 of this understanding and the analysis thereof by the registered pioneer investors shall be deposited for safe-keeping with the Secretary-General of the United Nations on a regular basis. Such data, information and analysis shall be presented for review and evaluation to a group of technical experts to be convened by the Preparatory Commission, in the manner specified in paragraph 6 of LOS/PCN/L.41/Rev.1, annex, except that the expenses associated with the meetings of the experts (e.g., travel, per diem and cost of miscellaneous supplies required for the work of the group) shall be paid from the registration fees received by the Preparatory Commission from the registered pioneer investors. The group of technical experts shall be convened upon the completion of the preparatory work referred to in paragraphs 9 to 17 of document LOS/PCN/BUR/R.5 and thereafter as required by the Preparatory Commission to undertake the technical review under the plan of exploration referred to above. The group of technical experts shall submit a report to the Preparatory Commission on the compliance by each registered pioneer investor with the terms of this understanding.

15. In accordance with resolution II, paragraph 7 (b), the Authority shall take into account the provisions of this understanding when negotiating the financial terms of contract and make adjustments in the financial arrangements with each registered pioneer investor, as appropriate. In doing so, the Authority shall take into consideration the early registration and satisfactory performance by each of the four registered pioneer investors of their respective obligations hereunder.

16. Paragraphs 7 and 8 of this understanding are without prejudice to the provisions of paragraph 12 (a) (i) of resolution II.

17. Taking into account paragraph 19 (e) of the statement on the implementation of resolution II (LOS/PCN/L.41/Rev.1, annex), the Preparatory Commission or the Authority shall enter into arrangements similar to those contained in this understanding with any other registered pioneer investor or applicant.